

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	File No. EB-02-TC-054
Battlefield Cable TV Company)	
)	CUID No. GA0068 (Ft. Oglethorpe)
Petition for Reconsideration)	
Complaint Regarding)	
Cable Programming Services Tier Rates)	

**ORDER ON RECONSIDERATION
AND RATE ORDER**

Adopted: Septemeber 4, 2002

Released: September 6, 2002

By the Chief, Enforcement Bureau:¹

1. In this Order, we consider a petition for reconsideration ("Petition") of Cable Services Bureau Order, DA 95-1035 ("Prior Order"),² filed with the Federal Communications Commission ("Commission") by the above-referenced operator ("Operator").³ Operator also requested a stay of the Prior Order, which was granted.⁴ The Prior Order resolved complaints filed against the rates charged by Operator for its cable programming services tier ("CPST") in the community referenced above through May 14, 1994. In the Prior Order, the Cable Services Bureau stated that its findings "do not in any way prejudice the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations."⁵ In this Order we deny Operator's Petition, vacate the stay and address the reasonableness of Operator's CPST rates beginning May 15, 1994.

2. Under the provisions of the Communications Act⁶ that were in effect at the time the complaints were filed, the Commission is authorized to review the CPST rates of cable systems not subject to effective competition to ensure that rates charged are not unreasonable. The Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act")⁷ and the Commission's rules required the Commission to review CPST rates upon the filing of a valid complaint by a subscriber or local franchising

¹ Effective March 25, 2002, the Commission transferred responsibility for resolving cable programming services tier rate complaints from the former Cable Services Bureau to the Enforcement Bureau. *See Establishment of the Media Bureau, the Wireline Competition Bureau and the Consumer and Governmental Affairs Bureau, Reorganization of the International Bureau and Other Organizational Changes*, FCC 02-10, 17 FCC Rcd 4672 (2002).

² In the Matter of Battlefield Cable Company, DA 95-1035, 10 FCC Rcd 9335 (1995).

³ The term "Operator" includes Operator's successors and predecessors in interest.

⁴ *See Petitions for Stay of Action*, DA 95-1795, 10 FCC Rcd 10591 (CSB 1995).

⁵ Prior Order at n. 1.

⁶ 47 U.S.C. §543(c) (1996).

⁷ Pub. L. No. 102-385, 106 Stat. 1460 (1992).

authority ("LFA"). The Telecommunications Act of 1996 ("1996 Act"),⁸ and the Commission's rules implementing the legislation ("Interim Rules"),⁹ required that a complaint against the CPST rate be filed with the Commission by an LFA that has received more than one subscriber complaint. The filing of a valid complaint triggers an obligation upon the cable operator to file a justification of its CPST rates.¹⁰ If the Commission finds the rate to be unreasonable, it shall determine the correct rate and any refund liability.¹¹

3. During the first phase of rate regulation, from September 1, 1993 until May 15, 1994, the benchmark rate analysis and comparison with an operator's actual rates were calculated using the FCC Form 393.¹² The benchmark formula was revised, effective May 15, 1994.¹³ Systems first becoming subject to rate regulation after May 15, 1994 were required to justify their initial regulated rates using forms in the FCC Form 1200 series.¹⁴ Systems against which rate complaints were still pending when the Commission revised its benchmark formula were required to recalculate their benchmark rates as of May 15, 1994 using the FCC Form 1200.¹⁵ The Commission's rules provide for a refund liability deferral period, if timely requested by Operator, beginning May 15, 1994 and ending July 14, 1994, for any overcharges resulting from Operator's calculation of a new maximum permitted rate on the FCC Form 1200.¹⁶ However, Operator will incur refund liability from May 15, 1994 through July 14, 1994 (or the date Operator restructures its rates, if sooner) for any CPST rates charged above the FCC Form 393 MPR approved by the Commission.¹⁷

4. Operators may file an FCC Form 1210 to justify quarterly rate increases based on the addition and deletion of channels, changes in certain external costs and inflation.¹⁸ Operators may justify their rates on an annual basis using an FCC Form 1240 to reflect reasonably certain and quantifiable changes in external costs, inflation, and the number of regulated channels that are projected for the twelve months following the rate change.¹⁹ Any incurred cost that is not projected may be accrued with interest and added to rates at a later time.²⁰

⁸ Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁹ See *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 5937 (1996).

¹⁰ See Section 76.956 of the Commission's rules, 47 C.F.R. § 76.956.

¹¹ See Section 76.957 of the Commission's rules, 47 C.F.R. § 76.957.

¹² See *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, 8 FCC Rcd 5631, 5755-56, 5766-67, 5881-83 (1993).

¹³ See *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, 9 FCC Rcd 4119 (1994).

¹⁴ See Section 76.922 of the Commission's rules, 47 C.F.R. § 76.922.

¹⁵ *Id.*

¹⁶ See 47 C.F.R. § 76.922 (b) (6) (ii).

¹⁷ 47 C.F.R. § 76.922 (b) (6) (ii). See also *Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, MM Docket No. 92-266, *Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking*, 9 FCC Rcd 4119, 4183-4185 (1994) (the maximum permitted rates determined under Form 393 may apply from May 15, 1994 until the date that the operator implemented its new rates, as determined under the Form 1200 series.)

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

5. In its Petition, Operator argues that the Cable Services Bureau erred in the Prior Order when it adjusted Operator's inflation factor based on the most recent data available. We disagree. This issue was addressed by the Commission in *Cencom Cable Income Partners II, L.P. ("Cencom")*.²¹ In *Cencom*, the Commission explained its policy regarding refreshing inflation:

The Commission is charged with protecting subscribers from paying unreasonable CPST rates, while also providing system operators with a fair return. Accurate information, including accurate inflation information, is central to setting an initial regulated rate that meets the standard. Thus, the Commission requires that data used in setting a rate be refreshed with the most current data available when an operator's rates become regulated and are justified.²² Because final inflation data for the period addressed in rate justifications may not be available when a justification is filed, the Commission directs operators to estimate inflation by using the most recently available inflation data published on an interim basis in the Commerce "Survey of Current Business" at Table 7.3, Line 5.²³ The Bureau practice when reviewing rate justifications is to verify that the operator has used this inflation data. The Bureau also determines whether the other information in the rate justification is correct, and on the basis of the inflation and other information in the form, including any corrections, whether the operator's rate meets the statutory requirement that the rate not be unreasonable. The Bureau does not find a rate unreasonable solely because more accurate inflation data has become available by the time it makes its review. This would churn rates, causing significant administrative expenses to operators and confusion to subscribers. However, if a rate is unreasonable on its face or has to be adjusted for reasons other than the availability of a more accurate inflation figure, e.g., because the operator failed to provide correct information in its rate justification or failed to complete its rate justification form correctly, the Bureau recalculates the maximum permitted rate using the most accurate inflation information available, rather than earlier estimates.²⁴ This practice is consistent with 47 C.F.R. § 76.922(b) (9) (iii), which provides:

[I]f the rates charged by a cable operator are not justified by an analysis based on the data available at the time it initially adjusted its rates, the cable operator must adjust its rates in accordance with the most accurate data available at the time of the analysis.

²¹ *In the Matter of Cencom Cable Income Partners II, L.P.*, FCC 97-205 (Released June 13, 1997).

²² See *Third Order on Reconsideration*, 9 FCC Rcd at 4349-50; FCC Form 393 at 11 Instruction for Line 122--GNP-PI (Current) (Aug. 1993). The Bureau has explained the requirement to use current data in Cable Operators' Rate Justification Filings, Sections 76.945, 76.946 of the Commission's rules, 9 FCC Rcd 7752, 7754-55 ¶ 3(8) (Cab. Serv. Bur. 1994) ("*Rate Filings*"); Nov. 10, 1993 Public Notice, Answer to Question No. 6 (in filing rate justifications, operators must refresh data used in initial rates with most current information as of the date of initial regulation); July 30, 1993 Public Notice, Answer to Question 10.

²³ See FCC Form 393 at 11 Instruction for Line 122--GNP-PI (Current) (Aug. 1993).

²⁴ See Public Notice, Cable Services Bureau Announces Policy Regarding Inflation Adjustment on FCC Form 393, DA 95-999 at 2 (Cab. Serv. Bur. May 2, 1995). The Bureau gave operators the opportunity to review and correct errors in their benchmark rate filings. Operators who had not previously correctly calculated the inflation adjustment factor were directed to use the accurate factors through June 30, 1994. Public Notice, Cable Services Bureau Announces Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases, DA 94-1556 at 3-4 (Dec. 29, 1994). The Public Notice listed the inflation adjustment factors through June 30, 1994.

[footnotes in original]

6. Because the Cable Services Bureau's action in the Prior Order is consistent with the Commission's holding in *Cencom*, we reject Operator's argument and deny Operator's Petition.

7. Upon review of Operator's amended FCC Form 1200, we accept Operator's calculated maximum permitted rate ("MPR") of \$11.62. Operator elected to defer refund liability pursuant to the Commission's rules,²⁵ and restructured its rates on July 1, 1994. Therefore, from May 15, 1994 through June 30, 1994, Operator is responsible for refunding any charges in excess of the FCC Form 393 MPR of \$11.95, approved in the Prior Order. Because Operator's actual CPST rate of \$12.46, effective May 15, 1994 through June 30, 1994, exceeds its FCC 393 MPR of \$11.95, we find Operator's actual CPST rate of \$12.46, effective May 15, 1994 through June 30, 1994, to be unreasonable. Because Operator's actual CPST rate of \$11.93, effective July 1, 1994 through December 31, 1995, exceeds its FCC Form 1200 MPR of \$11.62, we find Operator's actual CPST rate of \$11.93, effective July 1, 1994 through December 31, 1995, to be unreasonable.

8. Upon review of Operator's FCC Form 1210, covering the period July 1, 1994 through December 31, 1995, we find Operator's calculated MPR of \$12.64 to be reasonable. Because Operator's actual CPST rate of \$11.93, effective January 1, 1996, does not exceed its MPR of \$12.64, we find Operator's actual CPST rate of \$11.93, effective January 1, 1996, to be reasonable.

9. Accordingly, IT IS ORDERED, pursuant to Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, that Operator's petition for reconsideration IS DENIED.

10. IT IS FURTHER ORDERED, pursuant to Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that the stay of DA 95-1035, granted in *Petitions for Stay of Action*, DA 95-1795, 10 FCC Rcd 10591 (CSB 1995), IS VACATED.

11. IT IS FURTHER ORDERED, pursuant to Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that the CPST rate of \$12.46, charged by Operator in the franchise area referenced above, effective September 10, 1993 (the date the first valid complaint was filed with the Commission) through June 30, 1994, IS UNREASONABLE.

12. IT IS FURTHER ORDERED, pursuant to Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that the CPST rate of \$11.93, charged by Operator in the franchise area referenced above, effective July 1, 1994 through December 31, 1995, IS UNREASONABLE.

13. IT IS FURTHER ORDERED, pursuant to Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that the CPST rate of \$11.93, charged by Operator in the franchise area referenced above, effective January 1, 1996, IS REASONABLE.

14. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's rules, 47 C.F.R. § 76.961, that Operator shall refund to subscribers in the community referenced above that portion of the amount paid in excess of the maximum permitted CPST rate of \$11.95 per month (plus franchise fees), plus interest to the date of the refund, for the period September 10, 1993 (the date the first valid complaint was filed with the Commission) through June 30, 1994.

²⁵ See letter dated June 13, 1994 from Gary M. Steffen, Staff Accountant, Scripps Howard Cable Company.

15. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's rules, 47 C.F.R. § 76.961, that Operator shall refund to subscribers in the community referenced above that portion of the amount paid in excess of the maximum permitted CPST rate of \$11.62 per month (plus franchise fees), plus interest to the date of the refund, for the period July 1, 1994 through December 31, 1995.

16. IT IS FURTHER ORDERED that Operator shall promptly determine the overcharges to CPST subscribers for the stated periods, and shall within 30 days of the release of this Order, file a report with the Chief, Enforcement Bureau, stating the cumulative refund amount so determined (including franchise fees and interest), describing the calculation thereof, and describing its plan to implement the refund within 60 days of Commission approval of the plan.

17. IT IS FURTHER ORDERED, pursuant to Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that the complaint referenced herein against the rates charged by Operator in the community referenced above IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau